

*In the Matter of Sheriff's Investigator, Passaic County Sheriff's Office*  
CSC Docket No. 2010-2735  
**(Civil Service Commission, decided May 12, 2010)**

The Passaic County Sheriff's Office (Sheriff's Office) appeals the determination of the Division of State and Local Operations (SLO) regarding the calculation of its entitlement to unclassified Sheriff's Investigator positions.

By way of background, according to agency records, the Sheriff's Office currently employs 136 Sheriff's Officers, 21 Sheriff's Officer Sergeants, 8 Sheriff's Officer Lieutenants, and 12 Sheriff's Officer Captains for a total of 177 employees serving in the competitive division Sheriff's Officer title series. Agency records also show that the Sheriff's Office currently has 19 employees serving in the unclassified Sheriff's Investigator title and one employee serving in the unclassified Sheriff's Officer Chief title. Between June 15, 2009 and August 24, 2009, the Sheriff's Office requested that SLO record the appointments of eight additional Sheriff's Investigators – Albert Hapatsha and Jason Tangorra effective June 15, 2009, Giovanni Casillo and Tyson Cleaves effective July 13, 2009, and Brian T. Baker, Ryan J. Hoyt, David Longo, and Ryan Norton effective August 24, 2009. In response, SLO advised that in accordance with *N.J.S.A. 40A:9-117a*, it could not approve the appointments for these individuals since it would result in the Sheriff's Office employing more than 15% of the total number of Sheriff's Officers as Sheriff's Investigators. At the time, SLO explained that it only utilized the names of those Sheriff's Officers recorded in the County and Municipal Personnel System (CAMPS) when calculating entitlement for Sheriff's Investigators. SLO also advised the Sheriff's Office that it did not include employees serving in the Sheriff's Officer Sergeant, Sheriff's Officer Lieutenant, Sheriff's Officer Captain, and Sheriff's Officer Chief titles when calculating the number of Sheriff's Investigators entitled to a Sheriff. The Sheriff's Office questioned the basis for excluding the higher level Sheriff's Officers when making the calculations for Sheriff's Investigator. In response, SLO provided a copy of a memorandum dated May 20, 1987 from a former Commissioner of Personnel<sup>1</sup>, stating that, in implementing *N.J.S.A. 40A:9-117a*, the number of Sheriff's Investigators in each county should be limited to 15% of the total number of Sheriff's Officers employed in that county, *not* including those in superior ranks. Upon the Sheriff's Office appeal of this methodology, SLO referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the Sheriff's Office states that it has historically calculated its entitlement of Sheriff's Investigators by multiplying 15% of the total number of incumbents holding positions in the Sheriff's Officer title series, including those

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<sup>1</sup> The late Eugene J. McCaffrey, Sr., who, it should be noted, had formerly served as Gloucester County Sheriff.

employees serving in supervisory ranks. Further, it states that this practice has been followed for years and this agency has approved appointments consistent with this methodology. With respect to the 1987 memorandum provided by SLO, the Sheriff's Office emphasizes that it is not a legal opinion or an official clarification of legislative intent. Rather, the Sheriff's Office maintains that the 1987 memorandum is simply one former Commissioner's opinion of what the statute might have meant in 1987 and does not have the effect of a public law, opinion of a court, or decision of the Commission. The Sheriff's Office also notes that the original bill establishing the Sheriff's Investigator title was changed prior to passing from utilizing the total number of "law enforcement personnel" to the "total number of [S]heriff's [O]fficers employed by the [S]heriff." Thus, under the original bill, the calculation for Sheriff's Investigators would have included County Correction Officers, who are sworn law enforcement officers under the law. Therefore, since the Legislature did not intend for Sheriff's Investigators to be appointed based on the total number of Sheriff's Officers and County Correction Officers, for which the language of the bill was modified to exclude those law enforcement officers in the County Correction Officer title series, the Sheriff's Office posits that the law is intended to utilize the total number of incumbents serving in all levels of the Sheriff's Officer title series.

Additionally, the Sheriff's Office underscores that the statute has no limiting language to support the position of SLO that only those employees serving in the title of Sheriff's Officer will be included in the calculation for Sheriff's Investigator. Indeed, it notes that the name in the State Classification plan refers to each of the eight titles in the series as "Sheriff's Officer." As such, it contends that the language of the statute could also be interpreted as making reference to the entire Sheriff's Officer title series, *not* just Sheriff's Officers. Finally, the Sheriff's Office states that it has had conversations with the Passaic County Vicinage Assignment Judge who indicated that the statute does not limit the term Sheriff's Officer to one specific Civil Service title. Accordingly, the Sheriff's Office states that it will continue to utilize incumbents in all ranks of the Sheriff's Officer title series in order to calculate the number of Sheriff's Investigators it may appoint.

## **CONCLUSION**

*N.J.S.A. 40A:9-117a* provides that:

The sheriff of each county may appoint a number of persons, not to exceed 15% of the total number of sheriff's officers employed by the sheriff and set forth in the sheriff's table of organization in the county budget, to the position of sheriff's investigator. All sheriff's investigators shall serve at the pleasure of the sheriff making their appointment and shall be included in the unclassified service of the civil service.

A sheriff's investigator appointed pursuant to this section shall have the same compensation, benefits, powers and police officer status as is granted to sheriff's officers. The duties of sheriff's investigators shall be law enforcement investigations and related duties. A person appointed to the position of sheriff's investigator shall, within 18 months of appointment, complete a police training course at an approved school and receive certification by the Police Training Commission as provided in P.L.1961, c. 56 (C. 52:17B-66 et seq.). The implementation of this act shall not result in the layoff of permanent sheriff's officers.

Upon enactment of *N.J.S.A. 40A:9-117a*, on May 20, 1987, former Commissioner of Personnel McCaffrey issued a memorandum to the Director of County and Municipal Government Services (now SLO) detailing certain actions in order to implement the provisions specified in the law. At that time, two questions arose that impacted the implementation of the law. The first question was if the law provided for the designation of superior ranks for Sheriff's Investigators, *i.e.*, Sheriff's Investigator Sergeant, Sheriff's Investigator Lieutenant, and Sheriff's Investigator Captain. The second question that arose was whether "the total number of sheriff's officers" referred to in the statute included those serving in the superior ranks of the Sheriff's Officer title series. The Commissioner noted that the original bill linked the permissible number of Sheriff's Investigators to the "total number of law enforcement personnel" employed by the Sheriff. The Commissioner also noted that the bill was subsequently amended to the "total number of sheriff's officers." Based on the contemporary research done at the time of the statute's enactment, the Commissioner reasoned that the replacement of the broad term "law enforcement personnel" with "sheriff's officers" evidenced a legislative intent that the number of Sheriff's Investigators in each county should be limited to 15% of the total number of Sheriff's Officers employed in that county, *not* including those serving in superior ranks.

For the last 23 years, without challenge, this agency has applied the methodology of calculating the number of Sheriff's Investigators permitted in each county to 15% of the total number of entry level Sheriff's Officers employed in a particular county. This interpretation is bolstered by the findings of a subsequent challenge in 1987 that involved the Middlesex County Sheriff. In that matter, the Middlesex County Sheriff attempted to appoint two Sheriff's Investigator Sergeants, one Sheriff's Investigator Lieutenant, and one Sheriff's Investigator Captain and challenged the interpretation that *N.J.S.A. 40A:9-117a* did not provide for superior rank Sheriff's Investigator designations. In examining the language of the statute to address that matter, the Merit System Board (Board) observed that a close reading of the statute urged that the "sheriff's officer" terminology contained therein referenced the Sheriff's Officer title and not the title series encompassing the superior ranks. The Appellate Division, Superior Court of New Jersey, affirmed

the Board's determination in that matter. *See In the Matter of Sheriff's Investigators, County of Middlesex*, Docket No. A-3949-87T1 (App. Div. July 28, 1988). Additionally, it cannot be ignored that Civil Service law and rules generally favor that positions be included in the career, rather than the unclassified service. *See Walsh v. Department of Civil Services*, 23 N.J. Super. 39 (App. Div. 1954). For these reasons, the Commission finds that it is proper to calculate the number of Sheriff's Officers as 15% of the total number of Sheriff's Officers employed in that county, *not* including those Sheriff's Officers serving in superior ranks.

With respect to the Sheriff's Office argument that this agency has always recorded appointments to Sheriff's Investigator based on 15% of the total number of all levels of Sheriff's Officer it employs, as noted above, this agency has calculated the permissible number of Sheriff's Investigator appointments based on 15% of incumbents serving in the entry level Sheriff's Officer title since N.J.S.A. 40A:9-117a was enacted in 1987. Nevertheless, the record does suggest that the Sheriff's Office may have employed Sheriff's Investigators based on 15% of the total number of individuals in the Sheriff's Officer title series, including those in superior ranks, in contravention to this agency's disapproval of such appointments.

For example, in *In the Matter of Sheriff's Officers and County Correction Officers Layoff, Passaic County Sheriff's Office* (MSB, decided March 28, 2008) (*Layoffs*), one of the appellants in that matter whose title was laterally changed from County Correction Officer to Sheriff's Officer, but who did not complete the working test period for Sheriff's Officer, was unable to be returned to his permanent title of County Correction Officer because he did not complete the required Correction Officer Academy training. When he appealed this matter, claiming that he had been employed with the Sheriff's Office since April 2002 and had worked as a Sheriff's Investigator since December 2003, a review of his personnel record reflected that the Sheriff's Office attempted to appoint him to the unclassified Sheriff's Investigator title on December 22, 2003, but this appointment was disapproved because, at that time, his appointment would have exceeded the 15% total number permitted by N.J.S.A. 40A:9-117a. His personnel record also indicated that he was a Security Guard from April 29, 2002 until his resignation from that position on December 19, 2003. Thus, there was no record in this agency of him serving with the Sheriff's Office from December 19, 2003 to when he was appointed as a County Correction Officer on December 22, 2005. In other words, although that appellant asserted that he had performed the duties of a Sheriff's Officer since December 2003 to the time of his layoff in March 2008, this agency specifically disapproved his appointment to the Sheriff's Investigator title. Moreover, there was no record of his employment in any capacity with the Sheriff's Office from December 19, 2003, when he resigned as a Security Guard, to when he was appointed as a County Correction Officer on December 22, 2005. As such, in *Layoffs, supra*, the Board could only speculate that the Sheriff's Office employed the appellant in the capacity of an unclassified Sheriff's Investigator during that time

frame in contravention of this agency's disapproval of that appointment. Regardless, even assuming that this agency approved appointments beyond the 15% maximum, it clearly was an administrative error. No vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998).

Accordingly, SLO properly denied recording the requested appointments for those Sheriff's Investigators that exceeded 15% of the total number of Sheriff's Officers, not including those Sheriff's Officers serving in superior ranks, for the Sheriff's Office. Therefore, if it has not already done so, the Sheriff's Office should discontinue the unauthorized Sheriff's Investigator appointments of Albert Hapatsha, Jason Tangorra, Giovanni Casillo, Tyson Cleaves, Brian T. Baker, Ryan J. Hoyt, David Longo, and Ryan Norton.

## **ORDER**

Therefore, it is ordered that this appeal be denied. Additionally, within 30 days from the issuance of this decision, if it has not already done so, the Passaic County Sheriff is ordered discontinue the unauthorized unclassified appointments as Sheriff's Investigator of the listed employees.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.